

# NAVIGATOR

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## TELECOMMUNICATIONS

Notebook  
04-00381

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March 3, 2005


Darlene Standley  
Chief – Utilities Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Dear Ms. Standley:

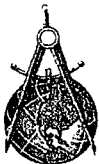
For your information, please find enclosed a copy of the response of Navigator Telecommunications, LLC. to BellSouth's Carrier Notification Letter SN91085039, released February 11, 2005 and stating BellSouth's intentions with regard to implementation of the FCC TRO Remand Order.

As stated in its response, Navigator Telecommunications objects to BellSouth's unilateral interpretation of the FCC's TRO Remand Order and asserts that BellSouth's proposed implementation violates the requirements of that Order directing the parties to negotiate in good faith regarding the terms and conditions necessary to implement the FCC's rule changes.

Sincerely,



Michael McAlister  
General Counsel  
Navigator Telecommunications, LLC.



**NAVIGATOR TELECOMMUNICATIONS, LLC.**

8525 Riverwood Park Drive  
P O Box 13860  
North Little Rock, AR 72113-0860  
Phone. (501) 954-4000  
Fax (501) 954-4002

Mr. Jerry Hendrix  
Assistant V.P. Interconnection Services  
BellSouth  
675 West Peachtree Street  
Atlanta, GA 30375

Monday, February 28, 2005  
via FedEx  
followed by U.S.P.S.

Ms. Shemega Goodman  
Contract Negotiator – ICS Marketing  
675 West Peachtree Street  
Room 34S91  
Atlanta, GA 30375

Re: Carrier Notification Letter SN91085039

Dear Mr. Hendrix and Ms. Goodman.

I am writing on behalf of Navigator Telecommunications, LLC. ("Navigator") in response to the Carrier Notification Letter referenced above issued on February 11, 2005 ("Notice"), concerning the FCC's Order on Remand, *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC 04-290, WC Docket No. 04-313, CC Docket No. 01-338 (rel. Feb. 4, 2005) ("*TRO Remand Order*").

In the Notice, BellSouth attempts, improperly and unilaterally, to implement its interpretation of the FCC's Order. Specifically, the Notice states that, effective March 11, 2005, BellSouth will no longer accept certain orders for unbundled switching, or for certain loop and transport elements. The Notice goes on to claim that the *TRO Remand Order* is "clearly intended...to be self-effectuating." Despite these claims, neither the FCC's *TRO Remand Order* nor the parties' interconnection agreement ("ICAs") allows BellSouth to take such unilateral action.

Contrary to the statements contained in the Notice, the *TRO Remand Order* requires carriers to abide by the change of law procedures outlined in parties' ICAs. Specifically, the FCC's *TRO Remand Order*, ¶ 233, directed carriers to "implement changes to their interconnection agreements consistent with our conclusions in this Order.... Thus, the incumbent LEC and competitive LEC must **negotiate in good faith regarding any rates, terms and conditions necessary to implement our rule changes.**" Indeed, the *TRO Remand Order*, ¶¶ 143, 196, established a 12-month transition period during

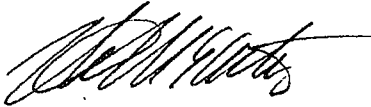
which carriers would work to "modify their interconnection agreements, including completing any change of law process." To effectuate a change in the parties' obligations under the ICA, BellSouth must enter into negotiations to amend the ICAs, and then either reach a mutually acceptable agreement or enter into dispute resolution discussions.

Navigator does not wish to delay the start of such negotiations to amend the parties' ICA. We, therefore, request to begin negotiations with BellSouth to implement the *TRO Remand Order*, in compliance with the change of law mandates set forth in the *TRO Remand Order*, ¶ 233. I am hereby appointed as the negotiation representative for such purposes. Please have your appointed representative contact me.

In the meantime, we expect BellSouth to comply with the implementation requirements of the ICA and the *TRO Remand Order*. Should you act on the threats contained in the Notice, we will view such action as unauthorized and unlawful, and we will immediately undertake appropriate legal and regulatory actions. Moreover, in view of BellSouth's announced intention to breach our interconnection agreements, we may have to pursue appropriate legal remedies before March 11 to prevent BellSouth from exercising illegal "self-help" in this matter.

In closing, we urge BellSouth in the strongest possible terms either to rescind the above-referenced Accessible Letters or revise them to reflect accurately the mandates of the *TRO Remand Order*.

Sincerely,



Michael McAlister  
General Counsel  
Navigator Telecommunications, LLC.

cc: Georgia PSC  
Florida PSC  
Alabama PSC  
Mississippi PSC  
Tennessee Regulatory Authority  
North Carolina Utilities Commission  
South Carolina PSC  
Kentucky PSC  
Louisiana PSC